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January 23, 2007

VIA HAND DELIVERY & ELECTRONIC FILING

The Honorable Mary Pat Thyng
United States District Court for the
District of Delaware
J. Caleb Boggs Federal Bldg.
844 N. King St.
Room 6100
Lockbox 8
Wilmington, DE 19801

Re: *L.J. Zucca, Inc. v. Allen Bros. Wholesale Distributors Inc., et al.*
Civil Action No. 1:07-CV-00002 (MPT)

Dear Magistrate Judge Thyng:

We represent Defendant Cooper-Booth Wholesale Company ("Cooper-Booth") in the above-referenced matter and write to the Court, pursuant to Local Rule 81.2, to identify all pending matters that require judicial action.

There is presently only one matter before the Court that requires judicial action. Defendant Cooper-Booth has a pending Motion for Partial Judgment on the Pleadings. In that Motion, we argue that Plaintiff's claims under the Delaware Unfair Cigarette Sales Act, 6 *Del. C.* §§ 2601 – 2608, are preempted by Section 1 of the Sherman Act, 15 U.S.C. § 1. There may be additional motions once the remaining three Defendants formally enter their appearances.

As a final matter, we bring to the Court's attention the fact that there is related litigation brought by L. J. Zucca, Inc. ("Zucca") pending in the Superior Court of New Jersey, Chancery Division, Cumberland County, Docket No. C-19-06. All of the Defendants in this case are also defendants in that case. Zucca had initially asserted the Delaware claims in the New Jersey litigation, but they were dismissed on comity grounds. Merits discovery in the New Jersey litigation, meanwhile, has been stayed while the parties litigate whether the New Jersey Unfair Cigarette Sales Act is preempted by the Sherman Act.

B L A N K



R O M E LLP
COUNSELORS AT LAW

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We look forward to the opportunity to meet with Your Honor at the initial case management conference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. K. Sheppard", written over the typed name.

David K. Sheppard
I.D. No. 4149

DKS:ka/pfc

cc: Stephen M. Orlofsky, Esquire (via inter-office mail)
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